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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,727	04/08/2004	Philippe Jean Goix	076920-0851	3223

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EXAMINER	
WILLIAMS, DON J	

ART UNIT	PAPER NUMBER
2878	

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/821,727	GOIX ET AL.	
	Examiner	Art Unit	
	Don Williams	2878	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 April 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the reference numbers have been manually written regarding figure 4, and figures 6-7. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dovichi et al (5,567,294).

As to claims 1, 4, 5, Dovichi et al discloses a multicolor particle analyzer (20) including a capillary (26), means (laser, 130) for projecting a light beam (132) through

capillary (26) to illuminate a predetermined volume (fluid) in the capillary (26), means (pump, 110) for causing a sample containing sample particles (filaments, 126) which naturally fluoresce or are tagged (dyed) to fluoresce and emit light (132) at one or more distinct wavelengths to flow along the capillary (26) through the predetermined volume (fluid), a tunable filter (139) for receiving light (132) emitted by each particle (filaments, 126) and repetitively passing light pulses for each wavelength of light (132) emitted by each particle (filaments, 126) as it passes through the predetermined volume (fluid), and a detector (CCD Chip, 138) for detecting the output light from the tunable filter and providing an output pulse for each light pulse at each of the multiple wavelengths, (see figure 1, figure 2, figure 11, column 3, lines 33-48, column 4, lines 62-67, column 5, lines 1-55).

As to claim 2, Dovichi et al disclose that the tunable filter (139) is an acousto-optic filter, (see column 5, lines 44-48).

As to claim 3, Dovichi et al disclose a detector (138) for detecting light scattered by particles (filaments, 126) as they travel through the predetermined volume (fluid), (see figure 2, figure 11, column 5, lines 23-45).

As to claim 6, Dovichi et al disclose that the particles (filaments, 126) are caused to flow at a rate (0.1 to 1 microliter/minute) such that the light (132) emitted by a particle (filaments, 126) is passed by the tunable filter (139) a number of times as the particle (filaments, 126) transits through the analyzing region, (see column 5, lines 42-45, column 6, lines 1-21).

As to claim 7, Dovichi et al disclose a particle analyzer (20) having a capillary (26) for receiving the sample fluid (filaments, 126), a pump (110) for causing the sample fluid (filaments, 126) to flow through the capillary (26), a light source (130) for projecting a light beam (132) through the capillary (26) to illuminate a predetermined region along the capillary (26) whereby singulated particles (filaments, 126) flow through the illuminated region and emit fluorescent light at the one or more wavelengths, a tunable optical filter (139) responsive to tuning pulses for receiving the fluorescent light and repetitively passing pulses of light at one or more wavelengths as a particle (filaments, 126) passes through the region, a detector (138) for receiving light pulses and provide an output signal for each of the pulses and a processor (142) configured to receive out signals and provide and output signal representative of the amplitude of each of the fluorescent wavelengths, (see figure 1, figure 2, figure 11, column 3, lines 33-48, column 4, lines 62-67, column 5, lines 1-55).

As to claim 8, Dovichi et al disclose that the tunable filter (139) is an acousto-optic filter, (see column 5, lines 44-48).

Claims 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Tambo et al (5,194,921).

As to claim 9, Tambo et al disclose particles (126) in a fluid (7) which fluoresce at one or more wavelengths (λ_1, λ_2) causing the fluid (7) to flow past a source (1) of illumination (2) whereby particles (126) emit fluorescent light (8) at the one or more wavelengths (λ_1, λ_2) periodically detecting the emitted characteristic fluorescence of

particles (126) as the flow through the illumination source (1); and providing output signals (V_{out1}, V_{out2}) representative of the characteristic wavelength (λ_1, λ_2) of each particles (126), (see figure 1, column 8, lines 17-43, figure 4, column 10, lines 3-20).

As to claim 10, Tambo et al disclose the characteristic fluorescence is detected by periodically passing the emitted light (8) at each characteristic wavelengths (λ_1, λ_2) through filters (11, 12) and detecting the passed emitted light (8), (see figure 1, column 8, 17-42).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Don Williams whose telephone number is 571-272-8538. The examiner can normally be reached on 8:30a.m. to 5:30a.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Georgia Epps
Supervisory Patent Examiner
Technology Center 2800